

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: January 10, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Koch-Chemie GmbH*

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Serial No. 79286410

Marcus P. Dolce of Flynn Thiel P.C.,  
for Koch-Chemie GmbH.

Matthew Howell, Trademark Examining Attorney, Law Office 123,  
Susan Hayash, Managing Attorney.

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Before Bergsman, Coggins, and Lebow,  
Administrative Trademark Judges.

Opinion by Coggins, Administrative Trademark Judge:

Koch-Chemie GmbH (“Applicant”) seeks registration on the Principal Register of  
the stylized mark below



for goods ultimately identified as

Chemicals used in industry; surface-active chemical agents, namely, wetting agents, surfactants for use in protecting textile and leather surfaces; leather renovating chemicals; leather-impregnating chemicals, namely, chemical agents for impregnating leathers; leather-waterproofing chemicals; preservatives for use in water treatment installations, namely, chemicals for the treatment of water; chemicals for removing bacteria, fungi, mould, moss and mould stains for use in purifying water and textile surfaces; chemicals, namely, acids, alkalis, precipitating agents, flocculants, auxiliary flocculating agents and sodium salts, in particular sodium chloride for purifying water and textile surfaces, in International Class 1;

Varnish; dyestuffs; anti-corrosive preparations, namely, anti-corrosive coatings; protective preparations, in particular with a polymer base, for sealing chassis, metals and plastics, namely, exterior surface protective coatings, in International Class 2;

Furbishing preparations; polishing preparations for lacquers; polishing wax; preservatives for leather, namely, leather polishes; preservation wax, namely, polishing wax, in International Class 3; and

Polishing materials for making shiny, except preparations, paper and stone, namely, polishing cloths and polishing pads being cleaning pads; cleaning sponges, in particular for grinding, polishing, washing and applying cleaning and care preparations for vehicles; wool for polishing; polishing gloves, in International Class 21.<sup>1</sup>

The Trademark Examining Attorney refused registration under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is merely descriptive of Applicant's goods. When the refusal was made final Applicant

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<sup>1</sup> Application Serial No. 79286410 was filed March 5, 2020, under Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f, as a request for an extension of protection under the Madrid Protocol based on International Registration No. 1532916. As described in the application, "[t]he mark consists of the stylized wording 'THE FINISHER'." Color is not claimed as a feature of the mark.

appealed. After the appeal was briefed, Applicant filed a request to divide out goods in Classes 1, 3, and 21 to which the Section 2(e)(1) refusal did not apply. 8 TTABVUE.<sup>2</sup> The appeal was suspended pending division, 9 TTABVUE, which was completed September 20, 2022,<sup>3</sup> then resumed and submitted for final decision as to the remaining goods identified above. 10 TTABVUE. We affirm the refusal to register.

### I. Merely Descriptive

Section 2(e)(1) of the Trademark Act prohibits registration on the Principal Register of “a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them,” unless the mark has been shown to have acquired distinctiveness under Section 2(f) of the Trademark Act, 15 U.S.C. § 1052(f).<sup>4</sup> A mark is “merely descriptive” within the meaning of Section 2(e)(1) if it conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re N.C. Lottery*, 866 F.3d 1363, 123 USPQ2d 1707, 1709 (Fed. Cir. 2017). On the other hand, a mark is suggestive, and not merely descriptive, if it requires imagination, thought, and perception on the part of someone who knows what the goods are to reach a conclusion about their nature from the

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<sup>2</sup> Citations to the appeal refer to TTABVUE, the Board’s online docketing system. Citations to the prosecution file refer to the .pdf version of TSDR, the USPTO’s Trademark Status & Document Retrieval system. See *In re Integra Biosciences Corp.*, 2022 USPQ2d 93, \*7 (TTAB 2022).

<sup>3</sup> “Child” application Serial No. 79975657 contains the goods that were divided out and was published for opposition on November 1, 2022. See 10 TTABVUE 1; and September 20, 2022 Notice that Processing of Request to Divide Application is Completed, at 2.

<sup>4</sup> Applicant does not claim that if the proposed mark is found to be merely descriptive, it is registrable because it has acquired distinctiveness.

mark. *See, e.g., In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1515 (TTAB 2016).

“A mark need not immediately convey an idea of each and every specific feature of the goods in order to be considered merely descriptive; it is enough if it describes one significant attribute, function or property of the goods.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1010 (Fed. Cir. 1987)).

Whether a mark is merely descriptive is “evaluated ‘in relation to the particular goods for which registration is sought, the context in which it is being used, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use or intended use,’” *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1219 (quoting *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)), and “not in the abstract or on the basis of guesswork.” *Fat Boys*, 118 USPQ2d at 1513 (citing *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978)). We ask “whether someone who knows what the goods . . . are will understand the mark to convey information about them.’ *Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1374 (Fed. Cir. 2018) (quoting *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012) (internal quotation omitted)).

In determining how the relevant consuming public perceives Applicant’s proposed mark in connection with its identified goods, we may consider any competent source, including dictionary definitions and Applicant’s own advertising material and

explanatory text. *See N.C. Lottery*, 123 USPQ2d at 1709-10; *Bayer*, 82 USPQ2d at 1831.

Relying on the following definitions of “finish” from MERRIAM-WEBSTER DICTIONARY:

- (noun) something that completes or perfects: such as . . . the final treatment or coating of a surface; and
- (transitive verb) to provide with a finish *especially*: to put a final coat or surface on // finish a table with varnish;<sup>5</sup>

and the following definition of “finisher” from LEXICO, POWERED BY OXFORD, US DICTIONARY:

- (noun) A person or thing that finishes something;<sup>6</sup>

the Examining Attorney argues that because the purpose of Applicant’s goods is to provide a finish (i.e., a final treatment or coating) to the surface of various items, Applicant’s goods may be described as being THE FINISHER because each good performs a finishing action. *See generally* 6 TTABVUE 7-10.

The Examining Attorney maintains that the proposed mark as a whole is merely descriptive in the context of the goods because the word FINISHER describes a function and purpose of the goods, the word THE in the mark is much smaller than FINISHER and adds no source-identifying significance, and the minimal stylization of the letters in the mark does not create a commercial impression separate from the wording itself. *Id.* at 7, 9.

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<sup>5</sup> January 25, 2021 Office Action at 6 and 7 (merriam-webster.com).

<sup>6</sup> August 23, 2021 Final Office Action at 5 (lexico.com).

Applicant argues that because its proposed mark identifies a product that “performs an action ... employing a finish,” an extra step of imagination, thought, or perception is required to reach a conclusion as to the nature of the goods, and therefore the mark does not “immediately” tell something about the goods. 4 TTABVUE 7. Applicant also argues that not all of its goods are final treatments and coatings for surfaces, or goods for applying final treatments and coatings to surfaces. 4 TTABVUE 8. The latter argument was made prior to the request to divide out certain goods. To the extent Applicant relies on this argument for the remaining goods, the merely descriptive refusal does not require that the mark is merely descriptive as applied to every item listed in each class; it is sufficient if the mark is merely descriptive of any of the goods identified in a single class to affirm the refusal as to that class. *In re Positec Grp. Ltd.*, 108 USPQ2d 1161, 1171 (TTAB 2013) citing *Chamber of Commerce of the U.S.*, 102 USPQ2d at 1220.

There is no question that many of Applicant’s remaining goods are finishes. In response to a request for information about its goods,<sup>7</sup> Applicant stated that “[s]ome of the goods used in association with the mark of the present application can be used as a coating or treatment for surfaces,”<sup>8</sup> and submitted a catalog<sup>9</sup> of its goods which demonstrates, as the Examining Attorney argues, that “[A]pplicant advertises its

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<sup>7</sup> January 24, 2021 Office Action at 3 (request).

<sup>8</sup> July 21, 2021 Response to Office Action at 1 (Applicant’s quote).

<sup>9</sup> *Id.* at 13-113 (catalog).

goods as finishes and [as] having the purpose or function of finishing.” 6 TTABVUE 8.

The goods remaining in Classes 1, 2, and 3, on their face, are described as finishes (i.e., “something that completes or perfects: such as . . . the final treatment or coating of a surface”). For example, Class 1 contains surface-active chemical agents for use in protecting textile and leather surfaces, Class 2 contains varnish and other coatings, and Class 3 contains polishing preparations. Similarly, Class 21 includes on its face goods used in the finishing of surfaces, such as polishing cloths, pads, sponges, wool, and gloves. As the Examining Attorney points out, Applicant’s own catalog supports these contentions.<sup>10</sup>

Based on the LEXICO definition of “finisher” as “[a] . . . thing that finishes something,” we easily find that the identified goods – as things that finish surfaces – may be described as “finishers.”

We also find that the placement in the proposed mark of the article THE in small letters in front of the descriptive word FINISHER adds little or no source-identifying significance to the mark. *See, In re The Place, Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (holding THE GREATEST BAR merely descriptive of restaurant and bar services; “the definite article THE . . . add[s] no source-indicating significance to the mark as a whole”). *Cf., Pierce-Arrow Soc’y v. Spintek Filtration, Inc.*, 2019 USPQ2d 471774, at \*5 (TTAB 2019) (article “the” has no source-identifying significance in the

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<sup>10</sup> *See* Examining Attorney’s Appeal Brief, 6 TTABVUE 8, citing examples from Applicant’s catalog included with the July 21, 2021 Response to Office Action.

name “The Pierce-Arrow Society”); *In re Thor Tech*, 90 USPQ2d 1634, 1635 (2009) (“The addition of the word ‘The’ at the beginning of the registered mark does not have any trademark significance. ‘The’ is a definite article. When used before a noun, it denotes a particular person or thing.”).

Lastly, we acknowledge that Applicant’s proposed mark is displayed in stylized lettering. Stylized descriptive wording is registrable only if the stylization creates a commercial impression separate and apart from the impression made by the wording itself. *See In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1639-40 (Fed. Cir. 2016); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 1561, 227 USPQ 961, 964 (Fed. Cir. 1985); TRADEMARK MANUAL OF EXAMINING PROCEDURE § 1209.03(w) (July 2022). We find that the degree of stylization in this case is not sufficiently striking, unique, or distinctive so as to create a commercial impression separate and apart from the unregistrable components of the mark. *See In re Sadoru Grp., Ltd.*, 105 USPQ2d 1484, 1490 (TTAB 2012) (common and ordinary lettering with minimal stylization is generally not sufficient to make an impression on purchasers separate from the wording).

## II. Conclusion

We have considered all arguments and evidence of record. Based on this evidence, we conclude that Applicant’s proposed mark  in its entirety, is merely descriptive of Applicant’s identified goods because it merely describes a primary function, purpose, and use of the goods which are finishes or used to finish surfaces, and by definition are “finishers.” No imagination, thought, or perception is required

on the part of someone who knows what the goods are to reach a conclusion about their nature from the proposed mark. We further conclude that the addition of the article “the” to the word “finisher” adds no source-indicating significance to the mark as a whole, and that the slight stylization of Applicant’s mark does not create a distinct commercial impression separate from the impression made by the wording itself.

### III. Decision

The refusal to register Applicant’s proposed mark  is affirmed.